

ORIGINAL

OPEN MEETING ITEM

COMMISSIONERS
MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE



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ARIZONA CORPORATION COMMISSION

DATE: AUGUST 7, 2007

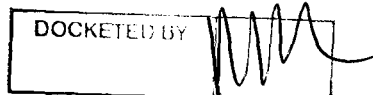
Arizona Corporation Commission

DOCKETED

DOCKET NO: T-20398A-06-0346

AUG 07 2007

TO ALL PARTIES:



Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

NAVIGATOR TELECOMMUNICATIONS, LLC
(CC&N/RESELL/FACILITY BASED)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

AUGUST 16, 2007

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

AUGUST 21, 2007 and AUGUST 22, 2007

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

IN THE MATTER OF THE APPLICATION OF
NAVIGATOR TELECOMMUNICATIONS, LLC
FOR A CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE RESOLD LOCAL
EXCHANGE, FACILITIES-BASED LOCAL
EXCHANGE, AND ACCESS
TELECOMMUNICATIONS SERVICES IN
ARIZONA.

DOCKET NO. T-20398A-06-0346

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING:	May 30, 2007
PLACE OF HEARING:	Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE:	Yvette B. Kinsey
APPEARANCES:	Mr. Michael Hallam, LEWIS & ROCA, LLP, on behalf of the Applicant; and Ms. Robin Mitchell, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On May 25, 2006, Navigator Telecommunications, LLC ("Navigator" or "Applicant") submitted to the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("Certificate" or "CC&N") to provide resold local exchange, facilities-based local exchange and access telecommunications services within the State of Arizona. The Applicant also requested that its services be classified as competitive.

On June 19, 2006, the Commission's Utilities Division Staff ("Staff") filed a Letter of Insufficiency stating that the Applicant's application had not met the sufficiency requirements as outlined in the Arizona Administrative Code. ("A.A.C").

From November 7, 2006, to February 6, 2007, Navigator filed amendments to its application.

1 On March 28, 2007, Staff filed its Staff Report recommending approval of Navigator's
2 application subject to certain conditions.

3 On April 17, 2007, by Procedural Order the hearing in this matter was scheduled to
4 commence on May 30, 2007.

5 On May 30, 2007, a full public hearing was held in this matter. Applicant and Staff appeared
6 through counsel and presented evidence and testimony. At the conclusion of the hearing, the
7 Applicant was directed to file an updated financial statement and the time clock was extended in this
8 matter.

9 On May 31, 2007, Applicant filed its late filed exhibit.

10 * * * * *

11 Having considered the entire record herein and being fully advised in the premises, the
12 Commission finds, concludes, and orders that:

13 **FINDINGS OF FACT**

14 1. In Commission Decision No. 58926 (December 22, 1994), the Commission found that
15 resold telecommunications providers ("resellers") are public service corporations subject to the
16 jurisdiction of the Commission.

17 2. In Commission Decision No. 68928 (August 29, 2006), the Commission granted
18 Navigator authority to provide resold long distance services in Arizona.

19 3. Notice of Navigator's application was given in accordance with the law.

20 4. Navigator's application in this docket seeks authority to provide business local
21 exchange and access services, by utilizing the facilities of the Incumbent Local Exchange Carrier
22 ("ILEC")(Qwest) and any other facilities available from other providers.

23 5. Navigator is currently authorized to provide local exchange and access
24 telecommunications services in 34 states.

25 6. Navigator also is authorized to provide long distance services in 44 states and
26 Washington, D.C.

27 7. Navigator is headquartered in North Little Rock, Arkansas and it employs 90
28 employees.

- 1 8. Navigator intends to eventually open a sales office in Arizona.
- 2 9. Navigator has been providing telecommunications services since 1998.
- 3 10. Based on its service history, Staff concluded that Navigator possesses the technical
- 4 capabilities to provide the services it is requesting authority to provide in Arizona.
- 5 11. Applicant provided Staff with audited financial statements for the years 2002, 2003,
- 6 2004, and 2005.
- 7 12. Applicant submitted audited financial statements for the year 2006 after the hearing.
- 8 13. Applicant's 2006 financial statements lists assets of \$6,262,198; Member's deficit of
- 9 \$11, 722,269; and a net loss of \$2,119,190.
- 10 14. Navigator will not collect deposits, prepayments or advances from its local exchange
- 11 customers.
- 12 15. Navigator's local exchange customers should be protected by the procurement of
- 13 either a performance bond or an irrevocable sight draft letter of credit.
- 14 16. The amount of the performance bond or irrevocable sight draft letter of credit should
- 15 be the aggregate amount for the multiple telecommunications services Navigator is requesting
- 16 authority to provide.
- 17 17. Navigator should procure a performance bond or irrevocable sight draft letter of credit
- 18 in the amount of \$25,000 for resold local exchange and \$100,000 for facilities based local exchange,
- 19 for a total aggregate amount of \$125,000.
- 20 18. If Navigator collects, at some future date, advance payments or deposits, the
- 21 performance bond or irrevocable sight draft letter of credit should increase in increments equal to 50
- 22 percent of the total minimum bond or sight draft letter of credit amount when the total amount of the
- 23 advances, deposits and/or prepayments is within 10 percent of the total minimum bond or sight draft
- 24 letter of credit.
- 25 19. The minimum performance bond or irrevocable sight draft letter of credit amount of
- 26 \$125,000 should be increased if at any time it would be insufficient to cover advances, deposits
- 27 and/or prepayments collected from Navigator's customers. The performance bond or irrevocable
- 28 sight draft letter of credit should be increased increments of \$62,500 and the increase should occur

1 when the total amount of the advances, deposits, and prepayments is within \$12,500 of the
2 performance bond or the irrevocable sight draft letter of credit amount.

3 20. Staff recommends that Navigator provide proof of its performance bond or irrevocable
4 sight draft letter of credit by sending the original bond or sight draft letter directly to the
5 Commission's Business Office, and provide 14 copies to Docket Control, within 365 days of the
6 effective date of an Order in this matter or 30 days prior to the provision of service, whichever comes
7 first, and that the performance bond or irrevocable sight draft letter of credit remain in effect until
8 further Order of the Commission.

9 21. If, at some future date, Navigator desires to discontinue its telecommunications
10 services in Arizona, pursuant to A.A.C. R14-2-1107, Navigator must file an application with the
11 Commission, and notify its customers and the Commission 60 days prior to filing the application that
12 it plans discontinue service. Failure to meet the requirements under the rule will cause a forfeiture of
13 Navigator's performance bond or irrevocable sight draft letter of credit.

14 22. Navigator will be providing service in areas where it will have to compete with other
15 ILEC and competitive local exchange carriers ("CLECs").

16 23. Navigator will not be able to exert any market power in the areas it is requesting to
17 serve and the competitive process will result in rates that are just and reasonable.

18 24. Pursuant to A.A.C. R14-2-1109, Navigator may charge rates for service that are not
19 less than its total service long-run incremental costs of providing service.

20 25. Navigator's proposed rates are for competitive services. In general, rates for
21 competitive services are not set according to the rate of return regulation. Navigator's fair value rate
22 base ("FVRB") is zero. Staff reviewed the rates to be charged by Navigator and they are just and
23 reasonable as they are comparable to other CLECs and ILECs operating in Arizona. Staff concluded
24 that although Navigator's FVRB was considered, it should not be given substantial weight in this
25 analysis.

26 26. Pursuant to A.A.C. R14-2-1308(A) and federal laws and rules, Navigator shall make
27 number portability available to facilitate the ability of the customer to switch between authorized
28 local carriers within a given wire center without changing their telephone number and without

1 impairment to quality, functionality, reliability or convenience of use.

2 27. In compliance with A.A.C. R14-2-1204 (A), all telecommunications service providers
3 that interconnect into the public switched network shall provide funding for the Arizona Universal
4 Service Fund ("AUSF"). Navigator will contribute to the AUSF as required by the A.A.C.

5 28. The quality of service standards outlined for Qwest in Commission Decision No.
6 59421 (December 20, 1995) applies to Navigator. However, Staff believes that because Navigator
7 has not had any unsatisfactory service issues and will be operating in a competitive environment, the
8 penalties outlined in the above referenced Decision should not apply.

9 29. In areas where Navigator is the only local exchange service provider, Navigator
10 should be prohibited from barring access to alternative local exchange service providers who wish to
11 serve the area.

12 30. Navigator will provide all customers with 911 and E911 service where available, or
13 will coordinate with ILECs, and emergency service providers to provide the service.

14 31. Pursuant to past Commission Decisions, Navigator may offer custom local area
15 signaling services such as Caller ID and Call Blocking, so long as the customer is able to block or
16 unblock each individual call at no additional cost.

17 32. Navigator must also offer Last Call Return service that will not return calls to
18 telephone numbers that have the privacy indicator activated.

19 33. According to Staff's Report, Navigator has not had an application for service denied
20 or revoked in any state, and there have been no formal complaint proceedings and no civil or criminal
21 proceedings involving Navigator.

22 34. The Consumer Services Division showed no complaints filed against Navigator in
23 Arizona.

24 35. Navigator certified that none of its officers, directors or partners have been involved in
25 any civil or criminal investigations, or formal or informal complaints, and none of its officers,
26 directors, or partners have been convicted of any criminal acts in the past ten (10) years.

27 36. Navigator has requested that its telecommunications in Arizona be classified as
28 competitive.

1 37. Staff recommends that Navigator's proposed services be classified as competitive
2 because there are alternatives to Navigator's services; Navigator will have to convince customers to
3 purchase its services; Navigator has no ability to adversely affect the local exchange or interexchange
4 service markets; and Navigator will therefore have no market power in those local exchange or
5 interexchange service markets where alternative providers to telecommunications services exist.

6 38. Access service includes common line, switched access, optional features and functions
7 and other miscellaneous service needed to provide the ability to enter or exit a local exchange
8 network for the purposes of originating or terminating long distance communications.

9 39. Based on Navigator's tariffs, Navigator's access service rates are comparable to the
10 rates of other access service providers in Arizona.

11 40. Navigator will have to compete with incumbent and other competitive access
12 providers in order to obtain customers for its services.

13 41. Navigator will not be able to exert any market power and the competitive process will
14 result in rates that are just and reasonable.

15 42. Navigator expects to begin business in Arizona within 30-40 days after a decision in
16 this matter.

17 43. Staff recommends approval of Navigator's application for a CC&N to provide
18 intrastate telecommunications services. Staff further recommends:

19 (a) That Navigator comply with all Commission Rules, Orders and other
20 requirements relevant to the provision of the intrastate telecommunications
21 services;

22 (b) That Navigator abide by the quality of service standards that were approved by the
23 Commission for Qwest in Docket No. T-01051B-93-0183;

24 (c) That Navigator be prohibited from barring access to alternative local exchange
25 service providers who wish to serve areas where Navigator is the only provider of
26 the local exchange service facilities;

27 (d) That Navigator be required to notify the Commission immediately upon changes to
28 its name, address or telephone number;

 (e) That Navigator cooperate with Commission investigations including, but not
 limited to customer complaints;

- (f) That although Staff considered the fair value rate base information submitted by Navigator, the fair value information provided was not given substantial weight in this analysis;
- (g) If at some future date, Navigator wants to collect advances, deposits and/or prepayments from its resold local service customers, Navigator should be required to file an application with the Commission for Commission approval. Additionally, Navigator's application must reference the Decision in this docket and must explain Navigator's plans for procuring its performance bond;
- (h) That Navigator offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
- (i) That Navigator offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated; and
- (j) That Navigator be authorized to discount its rates and service charges to the marginal cost of providing the services.

44. Staff further recommends Navigator comply with the following conditions within the timeframes outlined or Navigator's CC&N should be considered null and void, after due process.

- (1) That Navigator docket conforming tariffs for each service it will provide, within 365 days of the effective date of a Decision in this matter or 30 days prior to providing service in Arizona, whichever comes first. Additionally, the tariffs submitted to the Commission should coincide with the application and state that Navigator does not collect advances, deposits, and or/or prepayments from its customers.

(2) Navigator shall:

- (a) Procure a performance bond or irrevocable sight draft letter of credit equal to \$125,000. The minimum performance bond or irrevocable sight draft letter of credit amount of \$125,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from Navigator's customers. The performance bond or irrevocable sight draft letter of credit amount should be increased in increments of \$62,500. The increase should occur when the total amount of advances, deposits, and prepayments is within \$12,500 of the performance bond or irrevocable sight draft letter of credit amount.
- (b) Docket proof of the performance bond or irrevocable sight draft letter of credit

within 365 days of the effective date of a Decision in this matter or 30 days prior to the provision of service, whichever comes first. The performance bond or irrevocable sight draft letter of credit must remain in effect until further Order of the Commission.

45. Staff recommendations, as set forth herein are reasonable.

46. The rates proposed by this filing are for competitive services.

47. Applicant is a fit and proper entity to receive a CC&N to provide resold local exchange, facilities based local exchange and access telecommunication services in Arizona, subject to Staff's recommendations.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. A.R.S §§ 40-282 allows a telecommunications company to file an application for a CC&N to provide competitive telecommunications services.

4. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth in its application.

5. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for Applicant to establish rates and charges that are not less than the Applicant's total service long-run incremental costs of providing the competitive services approved herein.

ORDER

IT IS THEREFORE ORDERED that the application of Navigator Telecommunications, LLC for a Certificate of Convenience and Necessity for authority to provide resold local exchange, facilities based local exchange and access telecommunications services in Arizona, is hereby granted, conditioned upon compliance with Staff's recommendations set forth above.

1 IT IS FURTHER ORDERED that if Navigator Telecommunications, LLC fails to meet the
2 time frames outlined in Findings of Fact No. 44, the Certificate of Convenience and Necessity
3 conditionally granted herein shall become null and void, after due process.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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8 CHAIRMAN

COMMISSIONER

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10 COMMISSIONER

COMMISSIONER

COMMISSIONER

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12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of Phoenix,
this ____ day of ____, 2007.

15
16 BRIAN C. McNEIL
EXECUTIVE DIRECTOR

17
18 DISSENT _____

19
20 DISSENT _____

YBK:db

1 SERVICE LIST FOR: NAVIGATOR TELECOMMUNICATIONS, LLC

2 DOCKET NO.: T-20398A-06-0346

3
4 Michael Hallam
5 LEWIS AND ROCA, LLP
6 40 N. Central Ave., Suite 1900
7 Phoenix, AZ 85004
8 Attorneys for Navigator Telecommunications, LLC

9 Christopher Kempley, Chief Counsel
10 Legal Division
11 ARIZONA CORPORATION COMMISSION
12 1200 West Washington Street
13 Phoenix, AZ 85007

14 Ernest G. Johnson, Director
15 Utilities Division
16 ARIZONA CORPORATION COMMISSION
17 1200 West Washington
18 Phoenix, AZ 85007
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